

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**PLAINTIFF'S MOTION FOR
RECUSAL OF MAGISTRATE
JUDGE SARAH NETBURN**

Defendant/Respondent

Plaintiff respectfully moves this Court for an Order directing the recusal of Magistrate Judge Sarah Netburn from all further proceedings in this matter pursuant to 28 U.S.C. § 455(a) and the Due Process Clause of the Fifth Amendment.

This case was remanded to the district court on July 18, 2025, following the Second Circuit's decision. While the appellate proceedings addressed jurisdictional issues, the panel's opinion also contained constitutional errors that are the subject of Plaintiff's pending motion for extension of

1 time to file a rehearing petition. During the initial proceedings, Magistrate Judge Netburn made
 2 adverse findings about Plaintiff's character and motivations that create a clear appearance of bias
 3 requiring recusal from any further participation in this case.

4 **II. LEGAL STANDARD**

5 28 U.S.C. § 455(a) mandates recusal when a judge's "impartiality might reasonably be
 6 questioned." The standard is objective, focusing on whether a reasonable person with knowledge of
 7 all relevant facts would question the judge's impartiality. *Liljeberg v. Health Servs. Acquisition*
 8 *Corp.*, 486 U.S. 847, 860 (1988). As the Supreme Court emphasized, "justice must satisfy the
 9 appearance of justice." *Offutt v. United States*, 348 U.S. 11, 14 (1954).

10 The appearance of bias, not actual bias, triggers recusal. In re *Drexel Burnham Lambert Inc.*,
 11 861 F.2d 1307, 1312 (2d Cir. 1988). Recusal is particularly warranted when a judge has made
 12 adverse credibility or character determinations about a party. *United States v. Balistrieri*, 779 F.2d
 13 1191, 1213 (7th Cir. 1985).

14 **III. GROUNDS FOR RECUSAL**

15 **A. Express Bad Faith Finding and Character Condemnation**

16
 17 On October 30, 2023, Magistrate Judge Netburn made an express finding that "Plaintiff filed
 18 this lawsuit in bad faith" and recommended dismissal based on this character determination. In her
 19 Report and Recommendation (Dkt. 58, pp. 12-13), she ruled:

20 **"Additionally, the Court finds that Plaintiff filed this lawsuit in**
 21 **bad faith. Plaintiff litigated Defendant's alleged concealment of**
 22 **her ABR test data extensively in California for six years... The**
 23 **same week the California Court of Appeal affirmed the dismissal**
 24 **of the prior case with prejudice, Plaintiff filed this case in a**
transparent attempt to evade the California court's decision.
Accordingly, I recommend Plaintiff not be afforded leave to
amend her complaint."

25 This finding branded Plaintiff as a bad faith litigator who files lawsuits in "transparent
 26 attempts to evade" adverse court decisions. No reasonable observer could expect impartial treatment
 27

1 from a judicial officer who has made such definitive negative determinations about a party's
2 character and litigation motivations.

3 **B. District Judge's Contrary Ruling Confirms Magistrate's Error**

4 Most significantly, on December 20, 2023, District Judge Engelmayer directly contradicted
5 the bad faith characterization by finding merit in Plaintiff's position. In his Opinion & Order (Dkt.
6 62, p. 8), Judge Engelmayer specifically found:

7 "The Court agrees with Banga that the FAC did allege one
8 request to Lustig as to which a § 123110 claim for injunctive
9 relief is timely" and "The Court finds Banga to have pled facts
10 that plausibly make her § 123110 claim, based on the March 12,
11 2020 request, timely."

12 This finding directly refutes Magistrate Judge Netburn's conclusion that Plaintiff's lawsuit
13 was filed in "bad faith." The district court's determination that Plaintiff's allegations were legally
14 viable and timely proves that the magistrate's character condemnation was unfounded, creating an
15 insurmountable appearance that she cannot impartially evaluate Plaintiff's conduct in future
16 proceedings.

16 **C. Due Process Violation**

17 The Due Process Clause requires proceedings before a neutral and impartial tribunal. *Tumey*
18 *v. Ohio*, 273 U.S. 510 (1927). When a judicial officer has made adverse findings regarding a party's
19 good faith and credibility, continued participation violates due process principles.

20 **IV. PRECEDENTIAL SUPPORT**

21 Courts routinely grant recusal where judges have made prior adverse determinations about a
22 party's credibility or good faith. In *Peterson v. BMI Refractories*, 124 F.3d 1386, 1394 (11th Cir.
23 1997), the court held that a judge's finding that a party had acted in bad faith created such an
24 appearance of bias that recusal was mandatory under Section 455(a). The court noted that "once a
25 judge has determined that a party is not credible or is acting in bad faith, it becomes very difficult
26 for that judge to approach future proceedings involving that party with the appearance of
27 impartiality."

1 Similarly, in *United States v. Murphy*, 768 F.2d 1518, 1539 (7th Cir. 1985), recusal was
 2 required where the judge had expressed views about the defendant's character. The Third Circuit in
 3 *Securacomm Consulting Inc. v. Securacom Inc.*, 224 F.3d 273, 278 (3d Cir. 2000), held that recusal
 4 was required where the judge had made statements suggesting predetermined views about a party's
 5 credibility.

6 VI. CONCLUSION

7 Magistrate Judge Netburn's express finding that Plaintiff "filed this lawsuit in bad faith" and
 8 her recommendation to dismiss Plaintiff's entire case based on this character determination creates a
 9 substantial appearance of bias that requires recusal under 28 U.S.C. § 455(a). **No party should be**
 10 **required to appear before a judicial officer who has already made such definitive negative**
 11 **findings about their motivations and conduct.**

12 The appearance of partiality in these circumstances is not a reflection on Magistrate Judge
 13 Netburn's integrity, but rather an inevitable consequence of her prior assessment of Plaintiff's
 14 conduct. In the interest of preserving both the reality and appearance of judicial impartiality, recusal
 15 is warranted.

16 **WHEREFORE**, Plaintiff respectfully requests that this Court:

- 17 1. **GRANT** this Motion for Recusal;
- 18 2. **ORDER** Magistrate Judge Sarah Netburn to recuse from all further proceedings in this
 19 matter;
- 20 3. **DIRECT** reassignment to a different Magistrate Judge; and
- 21 4. **GRANT** such other relief as the Court deems just and proper.

22 Respectfully submitted,

23 Dated: July 23, 2025,

24 By: /s/ Kamlesh Banga
 25 Kamlesh Banga

26 PLAINTIFF IN PRO PER

DENIED. The Clerk of Court is respectfully directed to close the motion pending at Docket 72.

SO ORDERED.

A handwritten signature in cursive script, reading "Paul A. Engelmayer", written in black ink.

PAUL A. ENGELMAYER
United States District Judge

Date: July 24, 2025